

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 91-625-E - ORDER NO. 92-536^{✓c}
JULY 9, 1992

IN RE: 215 Industrial Road Limited Partnership,)	
)	
Complainant,)	ORDER
)	DISMISSING
vs.)	COMPLAINT
)	
South Carolina Electric & Gas Company,)	
)	
Respondent.)	
)	
)	
)	

On October 25, 1991, the Complainant, 215 Industrial Road Limited Partnership (215) filed a request for hearing before the Public Service Commission of South Carolina (the Commission) concerning a billing adjustment from South Carolina Electric & Gas Company (SCE&G). The Commission granted a hearing on the matter.

A hearing was held on July 1, 1992 at 10:30 a.m., at the Offices of the Commission with Chairman Henry G. Yonce, presiding. The Complainant, 215 Industrial Road Limited Partnership was represented by Frank R. Ellerbe, III, Esquire. Ellerbe presented the testimony of witness Leonard Jacobs; the Respondent, South Carolina Electric & Gas Company was represented by Randolph R. Mahan, Esquire, who presented the testimony of S.P. Stoney and James D. Bozard; the Commission Staff was represented by F. David

Butler, Esquire, and presented no witnesses.

215 Industrial Road Limited Partnership is the owner of an industrial facility located at 215 Industrial Road, Summerville, South Carolina. The Complainant alleges that since February 5, 1981, electricity has been provided to its facility by SCE&G, either directly to the Complainant or to its predecessor, Rabin Brothers. The Complainant states that in 1987, it made a decision to split the electric service at its Industrial Road location so that its tenant Coastal Corrugated would be billed separately for its electricity. An electrical contractor, hired by the Complainant split the service on or about May 5, 1987. SCE&G installed two new meters for service to Coastal Corrugated and to Rabin Brothers. The Complainant states that at the time SCE&G installed the meters, it had assigned the meters to the wrong accounts, so that Coastal Corrugated was billed for service to Rabin Brothers, and Rabin Brothers was billed for service to Coastal Corrugated. The crossed accounts/meters were discovered in July 1990, at which time the Complainant states that SCE&G acknowledged the error and credited Complainant's account in the amount of \$2,148.15. This credit was the difference between what the Complainant was actually charged, and what it should have been charged for a period of six (6) months prior to July 1990. At the same time, SCE&G debited the account of Coastal Corrugated in the amount of \$2,148.15. The Complainant states that it believes that SCE&G construed R.103-340 to require it only to credit Complainant's account for six (6) months of overcharges.

According to the Complainant, this interpretation is contrary to terms of the regulation which requires the utility to credit its customer's account for the entire excess amount charged where the interval during which the overcharge occurred can be determined. The Complainant alleges that SCE&G determined that the overcharge occurred from May 1987 to July 1990, and that SCE&G determined that the Complainant had been billed and paid excess charges in the amount of \$23,216.87. The Complainant states that SCE&G has refused to credit or refund the entire amount, but has instead given credit in the amount of \$2,148.15. The Complainant comes before this Commission requesting an Order requiring that SCE&G refund the additional amount of \$21,068.72 to the Complainant. The Respondent, SCE&G states that since it was Rabin Brothers' wiring, building, and electrician, that it should have asked that this account be transferred to a new meter and that new customer set-up on the existing meter. SCE&G states that it does not see any fault on its part in the way the transaction was handled.

There is no dispute among the witnesses in this case that the accounts/meters were crossed, and that Rabin Brothers and, later, 215 Industrial Park was billed for electricity used by Coastal Corrugated, and that Coastal Corrugated was billed for electricity used by Rabin Brothers and 215 Industrial Park. Leonard Jacobs testified to the matters alleged above in the complaint, and stated that he believed that SCE&G acknowledged that R.103-340 applies through the letter of Ronald P. Dukes to the 215 Industrial Road Limited Partnership of August 16, 1990. See

Hearing Exhibit No. 1. Jacobs is of the opinion that SCE&G owes 215 Industrial Road Limited Partnership an additional \$21,068.72, due to this acknowledgment.

The Respondent SCE&G presented the testimony of S.P. Stoney and James D. Bozard. Stoney affirmed Jacobs testimony that the meters in the case were crossed. Counsel for 215 Industrial Road Limited Partnership objected to several portions of Stoney's testimony, based on hearsay grounds, and that Stoney had no personal knowledge of that of which he was testifying.

First, the counsel for 215 Industrial Road Park objected to Page 3, Lines 6 through 16 of Stoney's testimony on the grounds that the matters contained therein were hearsay, and that Stoney had no personal knowledge. The testimony in dispute was that a Company service man was requested to disconnect the service of the whole complex, so the electrician working for the property owner could disconnect circuits in the main panel box, and reconfigure those circuits in a separate manner for two end users. When that work was completed, the Company service man hooked up the new service for Coastal Corrugated by way of Meter No. 229327, and reconnected service to Rabin Brothers by way of Meter No. 182582. The Commission sustains 215's objection, and orders that this testimony be stricken from the record. Witness Stoney admitted from the stand that he had no personal knowledge of what the Company serviceman actually did to the 215 Industrial Road complex at the time testified to. Further, counsel for SCE&G withdrew voluntarily Page 3, Line 12 of Stoney's testimony.

Attorney Ellerbe also objected to Page 5, Line 2 through Page 6, Line 4 of Stoney's testimony on similar grounds. The Commission agrees with counsel's objection with regard to Page 5, Lines 11, (beginning with the word "indeed") through Line 14, since the Commission believes that Stoney only knew what he was told with regard to this evidence. This portion of Ellerbe's objection is therefore sustained. However, with regard to the remaining portions of Ellerbe's objection to Pages 5 and 6 of Stoney's testimony, the Commission overrules the objection. The remainder of the testimony on Pages 5 and 6 consists of opinion evidence, based on Stoney's assessment of the situation, and the Company's usual control and responsibility for the configuration of circuits in a customer's panel box. Mr. Stoney merely describes the fact that the responsibility of the Company ends at its side of the meter and does not go beyond the meter. The Company, through Stoney, also states an opinion that R.103-340 did not apply, since in Stoney's opinion, there was no misapplied schedule, no error in reading meters, no skipped or estimated meter reading, nor any other human or mechanical error on the part of SCE&G. SCE&G is allowed to state its opinion as to whether or not it violated the regulation when it is responding in a complaint proceeding. Stoney also goes on to object to paying for an error which it believes was committed by an agent of 215 Industrial Road Limited Partnership. The Commission sees no problem with the witness stating an opinion as to what should be done with the complaint. This portion of Ellerbe's objection is

therefore overruled.

Ellerbe also objects to a portion of Hearing Exhibit 2, specifically Exhibit SPS-5 on the same grounds, that is, that the letter entailed in the exhibit makes a statement outside Stoney's exact knowledge, and is therefore hearsay information. The Commission overrules this objection, and would state that Exhibit No. SPS-5 was not offered to prove the truth of the matter asserted, but was merely submitted into evidence to show what witness Stoney told witness Jacobs by way of a letter dated October 30, 1990.

Further, counsel for 215 objected to a portion of the cross-examination of SCE&G witness Stoney by Commission Staff Attorney Butler. Butler had asked Stoney details of who set up what wiring and electrical equipment on the 215 Industrial Road Park premises. The objection was that Stoney had no personal knowledge of such matters. We sustain this objection, based on our prior rulings in the case.

In addition Ellerbe objected to the presentation of James D. Bozard as a subpoenaed witness for the Respondent, SCE&G. The grounds for Ellerbe's objection is R.103-869(C), which requires that a witnesses' testimony be prefiled with the Commission prior to presentation. SCE&G correctly states that it subpoenaed Bozard subject to Commission Regulation 103-850. The Commission does not find it necessary to reach a conclusion on the potential conflict of these regulations, since the Commission rules that Bozard's testimony was cumulative to that of previous witnesses in any

case. Any error that may or may not have been committed by the Commission would be harmless, in any event. The witness' testimony shall be left in the record as given orally from the stand, even though the Commission would state that the better practice is to prefile testimony with the Commission prior to presentation.

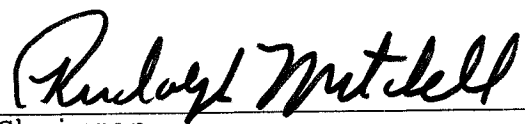
Lastly, 215 Industrial Road Limited Partnership Attorney Ellerbe moved for a directed verdict at the end of the evidence on the grounds that R.103-340 clearly applies and 215 is entitled as a matter of law to the amount of the full overcharge. Ellerbe argues that SCE&G recognized the regulation in the letter of Ron Duke, and that the refund of only six (6) months credit was a misreading of the regulation. Ellerbe argues that, under the regulation, the amount of the overcharges is ascertainable, and therefore, should be fully refunded. The Commission believes that this motion must be denied, and 215's complaint must be dismissed. Even after sustaining parts of Attorney Ellerbe's hearsay objections, it is clear, after considering the remainder of the record before the Commission as a whole, that there is no question but that the circuits were crossed. Both witnesses confirmed this fact. Further, witness Stoney testified that irregardless of what may have actually happened, SCE&G's responsibility ends at its side of the meter; that it does not go beyond the meter, and that as between SCE&G and 215 Industrial Road Limited Partnership, that the partnership is the only entity which could have known of the problem. The Commission agrees with this reasoning. The

Commission also believes that SCE&G, based on the record before us, was not responsible for the error that resulted in the overcharge to one customer and the undercharge to the other. Further, the mention of R.103-340 by Ronald P. Duke in his letter of August 16, 1990 to the partnership does not commit the Company to the application of that regulation, if the regulation was not applicable to begin with. This Commission does not believe that R.103-340 was applicable to the situation, based on the record before it, since any responsibility that SCE&G had ended on its own side of the meters in question. We agree with SCE&G that liability, if any, in this matter lies elsewhere.

IT IS THEREFORE ORDERED THAT:

1. The complaint of 215 Industrial Road Limited Partnership is hereby dismissed.
2. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


VICE Chairman

ATTEST:


Executive Director

(SEAL)